

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NETWORK APPS, LLC, KYLE SCHEI, and
JOHN WANTZ,

Plaintiffs,

v.

AT&T INC., AT&T CORP., AT&T MOBILITY
LLC, and AT&T SERVICES, INC.,

Defendants.

Civil Action No. 21-cv-00718-KPF

**EXHIBIT ONE TO CIVIL CASE
MANAGEMENT PLAN AND
PROPOSED SCHEDULING ORDER**

**EXHIBIT ONE TO [PROPOSED] CIVIL CASE MANAGEMENT PLAN AND
SCHEDULING ORDER:**

PARTIES' POSITIONS WHERE AGREEMENT WAS NOT REACHED

On Monday, March 29, 2021, counsel for Plaintiffs Network Apps, LLC, John Wantz, and Kyle Schei (together, "Plaintiffs") met and conferred with counsel for Defendants A&T Mobility LLC and AT&T Services, Inc. (collectively, "AT&T") pursuant to their obligations under Fed. R. Civ. P. 26(f).

The parties did not reach agreement on the following portions of the Court's model Case Management Plan and Scheduling Order. The areas of disagreement are described below following the numbering on the Court's model order. For convenience, a table with each proposed interim deadline is included at the end of this submission.

4. Amended Pleadings.

At the 26(f) conference, the parties did not reach agreement.

Plaintiffs contend that any motion to amend or to join additional parties shall be filed within 30 days from the date the Court so-orders the scheduling order.

Defendants contend that this portion of the scheduling order is premature because they seek a stay of discovery. Defendants contend setting this deadline should be set after decision on their to-be-filed motions.

5. Initial Disclosures.

At the 26(f) conference, the parties did not reach agreement.

Plaintiffs contend that, absent agreement between the parties, Fed. R. Civ. P. 26(a)(1)(C) is the appropriate default rule. This Rule provides that “A party must make the initial disclosures at or with 14 days after the parties’ Rule 26(f) conference unless a different time is set by stipulation or court order” Consequently, Plaintiffs served their initial disclosures on April 12, 2021.

Defendants contend that the Court’s model case management plan modifies the default rule and permits service of initial disclosures “14 days following the initial pretrial conference,” which has not been set. Defendants contend setting this deadline is premature and that the deadline for service of initial disclosures should be set after decision on their to-be-filed motions.

7. Discovery

7(e): Completion of Fact Discovery.

At the 26(f) conference, the parties did not reach agreement.

Plaintiffs contend that fact discovery should close on February 11, 2022. The duration from case initiation to close of fact discovery comports with other patent cases handled by the Court.

Defendants contend setting this deadline is premature and should be set after decision on their to-be-filed motions.

7(f): Expert Discovery.

At the 26(f) conference, the parties did not reach agreement.

Plaintiffs contend that expert discovery should close on June 6, 2022. The duration from case initiation to close of expert discovery comports with other patent cases handled by the Court.

Defendants contend setting this deadline is premature and should be set after decision on their to-be-filed motions.

8. Interim Discovery Deadlines

8(b): Interrogatories pursuant to L.R. 33.3(a).

At the 26(f) conference, the parties did not reach agreement.

Plaintiffs contend that initial interrogatories should be served by April 26, 2021.

Defendants contend that this deadline is premature and should be set after decision on their to-be-filed motions.

8(d). Depositions of fact witnesses.

At the 26(f) conference, the parties did not reach agreement.

Plaintiffs contend that depositions of fact witnesses should be completed by November 30, 2021.

Defendants contend that this deadline is premature and should be set after decision on their to-be-filed motions.

8(e). Requests to Admit.

At the 26(f) conference, the parties did not reach agreement.

Plaintiffs contend that Requests to Admit should be served by December 31, 2021.

Defendants contend that this deadline is premature and should be set after decision on their to-be-filed motions.

20. Other Issues:

Number of Depositions: At the 26(f) conference, the Parties agreed that each side may need 15 depositions, a number for which the parties will require leave of Court under Fed. R. Civ. P. 30(a)(2)(A)(i)

Patent Deadlines: At the 26(f) conference, the parties could not reach agreement on interim deadlines for patent-specific matters. Further, the date of the claim construction hearing depends on the Court's schedule.

Dispositive Motions: Plaintiffs propose March 16, 2022 as the deadline for submission of dispositive motions. Defendants have not expressed a position.

For the Court's convenience, the table below sets forth each proposed deadline and the parties' positions on that deadline:

Matter	Plaintiffs' Proposed Deadline	Defendants' Proposed Deadline
Interim Fact Discovery Deadlines		
Initial Disclosures, and Plaintiff and Defendant to produce initial set of relevant documents identified in their Initial Disclosures and continue to supplement.	April 12, 2021	Deadline premature
Initial Interrogatories	April 26, 2021	Deadline premature
Last Day to Amend Pleadings	October 20, 2021	Deadline premature
Depositions complete	November 30, 2021	Deadline premature
Requests for Admission	December 31, 2021	Deadline premature
Fact Discovery Completion Date	February 11, 2022	Deadline premature
Dispositive Motions	March 16, 2022	Not addressed
Interim Patent Deadlines		
Disclosure of Asserted Claims and Infringement Contentions (LPR 6)	June 4, 2021	Deadline premature
Invalidity Contentions (LPR 7)	July 19, 2021	Deadline premature
Filing of Joint Disputed Claim Terms Chart (LPR 11)	August 6, 2021	Deadline premature
Filing of Opening Claim Construction Brief by Plaintiff (LPR 12(a))	September 8, 2021	Deadline premature
Filing of Responsive Claim Construction Brief by	October 8, 2021	Deadline premature

Defendant (LPR 12(b))		
Filing of Reply Claim Construction Brief by Plaintiff (LPR 12(c))	October 18, 2021	Deadline premature
Claim Construction Hearing before District Judge Katherine Polk Failla	[TBA]	Deadline premature
Expert Discovery		
Opening expert witness disclosures (Fed. R. Civ. P. 26(a)(2))	March 16, 2022	Deadline premature
Rebuttal expert witness disclosures	April 18, 2022	Deadline premature
Reply (limited to Defendant's rebuttal of Plaintiff's secondary considerations of non-obviousness)	May 6, 2022	Deadline premature
Expert Depositions	June 6, 2022	Deadline premature
Expert Discovery Completion Date	June 6, 2022	Deadline premature
Pre-trial Practice		
Joint Pretrial Order	July 6, 2022	Deadline premature
Trial	August 2022	Deadline premature

Dated: April 15, 2021

Respectfully submitted,

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